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14 ARIZONA SUPERIOR COURT  
15 SANTA CRUZ COUNTY

16 Arizona Democratic Party,  
17 Plaintiff,  
18 v.  
19 Suzanne Sainz, in her official capacity  
as Santa Cruz County Recorder,  
20 Defendant.  
21

No.

**COMPLAINT FOR STATUTORY  
SPECIAL ACTION**

(Assigned to Hon. \_\_\_\_\_)

22 Plaintiff Arizona Democratic Party (“ADP”) brings this special action against  
23 Defendant Suzanne Sainz, Santa Cruz County Recorder (the “Recorder” or “Defendant”),  
24 to compel Defendant’s compliance with the Arizona Public Records Law, A.R.S. § 39-121  
25 *et seq.* Plaintiff alleges as follows:

26 **INTRODUCTION**

27 1. ADP brings this action to compel the Recorder to immediately provide  
28 previously requested government records regarding mail ballots cast in Santa Cruz County

1 in the November 3, 2020 election. These records are sought to allow Plaintiff to notify and  
2 assist eligible Arizonans, including Plaintiff’s members and constituents, in curing any  
3 deficiencies in their ballots before the cure deadline—which is Tuesday, November 3rd for  
4 ballots with missing signatures, and Tuesday, November 10th for ballots with mismatched  
5 signatures—to ensure that these ballots are counted.

6 2. On or around September 1, 2020, ADP sent a written public records request  
7 to the Recorder, seeking, *inter alia*, a rolling list of ballots cast by mail for which the  
8 signature had not yet been verified, was in question, missing, or was otherwise rejected.

9 3. ADP sought to have production begin by October 16, 2020, to ensure that the  
10 organization would have sufficient time to notify voters with signature issues of the need to  
11 cure their ballots.

12 4. In response to the public records request, the Recorder declined to provide a  
13 list of requested information.

14 5. Under Arizona law, the Recorder has a duty to “promptly” respond to public  
15 records request, *see* A.R.S. § 39-121.01(D)(1), which has been defined as acting quickly or  
16 without delay in the context of the circumstances of the case at issue. *W. Valley View, Inc.*  
17 *v. Maricopa Cty. Sheriff’s Office*, 216 Ariz. 225, 230 (Ct. App. 2007).

18 6. The Recorder has violated the statutory duty to respond “promptly” under the  
19 circumstances by failing to disclose the requested records as they become available, starting  
20 on October 16, 2020.

21 7. If the Recorder is not compelled to produce responsive records on a regular,  
22 rolling basis starting on or by October 16, Plaintiff’s ability to assist eligible voters to ensure  
23 that their vote counts in the November 2020 election will be harmed. The Recorder’s refusal  
24 to produce records is directly contrary to the primary purpose of the Arizona Public Records  
25 Law, which is to provide for transparency so that the public “may monitor the performance  
26 of government officials and their employees.” *Phoenix New Times, Inc. v. Keegan*, 201  
27 Ariz. 344, 351 (Ct. App. 2001) (citation omitted).

1           8.       Plaintiff thus seeks to enjoin the Defendant from wrongfully withholding the  
2 responsive records in violation of the Arizona Public Records Law and to compel  
3 production of the requested public records.

4                   **NATURE OF THE CASE, PARTIES, JURISDICTION, AND VENUE**

5           9.       This is a statutory special action to compel the production of public records  
6 pursuant to the Arizona Public Records Law, A.R.S. § 39-121 *et seq.*

7           10.      Plaintiff the Arizona Democratic Party is a State committee, as defined by  
8 52 U.S.C. § 30101(15).

9           11.      ADP is dedicated to electing candidates of the Democratic Party to public  
10 office throughout the State of Arizona, including to the offices of the President of the United  
11 States and the United States Senate. To advance its mission, ADP is also dedicated to  
12 ensuring that all ballots cast for Democratic Party candidates, including for the Presidency  
13 and the United States Senate, are counted. ADP has thousands of members and constituents  
14 who vote by mail ballot or who receive early ballots. ADP is dedicated to helping its  
15 members and constituents ensure their mail ballots are counted and they are fully  
16 enfranchised. If ADP is not provided the records it has requested, it will be unable to assist  
17 these eligible voters, including its members and constituents, in making sure that their  
18 ballots count in the November 2020 election, frustrating its mission and also directly  
19 harming its members and constituents whose right to vote will be denied.

20           12.      Defendant Suzanne Sainz, Santa Cruz County Recorder, is an “officer” as  
21 defined in A.R.S. § 39-121.01(A)(1) and is subject to the Public Records Law.

22           13.      This Court has statutory special action jurisdiction over this matter pursuant  
23 to A.R.S. §§ 39-121.02 and 39-121.01(A) and Rules 1 and 4 of the Arizona Rules of  
24 Procedure for Special Actions.

25           14.      Venue is proper pursuant to A.R.S. § 12-401 and Rule 4(b) of the Arizona  
26 Rules of Procedure for Special Actions because, among other things, Defendant resides in  
27 this county and because the suit as against the Santa Cruz County Recorder in her personal  
28 capacity where she holds office.

1 **FACTS**

2 **A. Arizona voters have the right to vote by mail and to vote early in person.**

3 15. Every registered voter in Arizona may apply for and cast a mail ballot in any  
4 election. A.R.S. § 16-542(A).

5 16. For mail ballot requests received at least 27 days before Election Day, election  
6 officials are required to mail voters a ballot between 27 and 24 days before the election. *Id.*  
7 § 16-542(C); *id.* § 16-544(F). The 2020 general election is scheduled for November 3, 2020.  
8 Therefore, for all voters who requested their mail ballot by October 7, election officials in  
9 Arizona are required to mail them their ballots between October 7 and October 10, 2020.  
10 For requests received between 26 and 11 days before the election, election officials are  
11 required to mail voters a ballot within two business days of the request. *Id.* § 16-542(D).

12 17. Regardless of how a mail ballot arrives, to be counted, a mail ballot must be  
13 received by the Recorder or other officer in charge of elections, or dropped off at any ballot  
14 drop-off location, drop-box established by the county or municipality, or any voting  
15 location in the county, by 7:00 p.m. local time on Election Day. *Id.* § 16-547(C); *id.* § 16-  
16 551(C).

17 18. In addition to arriving on time, the mail ballot's return envelope (which all  
18 ballots have) must also contain a valid signature to be counted. Specifically, the return  
19 envelope provided with each mail ballot has an affidavit on it that must be signed in order  
20 for the ballot to be counted. *Id.* § 16-547(A), (C); *id.* § 16-550(A).

21 19. Once the Recorder receives the ballot, they or other officers in charge of  
22 elections review the return envelope to ensure that it contains a valid signature on the  
23 affidavit. If an affidavit is missing a signature or if the Recorder or other officer in charge  
24 of elections finds the voter's signature on the mail ballot affidavit does not match any  
25 signature in that voter's registration record, the ballot will not be counted unless the voter  
26 cures the missing or mismatched signature. *Id.* § 16-550(A); *id.* § 16-547(A).



1 **B. The Arizona Democratic Party properly requested public voting records to**  
2 **assist voters in curing deficient ballots and ensure their votes count.**

3 25. ADP has many members and constituents who vote by mail ballot or who  
4 receive early ballots. As part of its strategy to ensure all Arizona votes are counted and as a  
5 service to its members and constituents to ensure they are fully enfranchised, ADP contacts  
6 voters whose mail ballots have been identified by the Recorder as potentially deficient to  
7 inform them of the deficiency and to provide them with information about how to cure their  
8 ballots to make sure they are counted.

9 26. Specifically, volunteers from ADP call voters, clearly identify themselves,  
10 ask if the voter has already been made aware of the need to cure a deficiency, and then  
11 provide information on steps the voter can take to cure the deficiency. Volunteers work  
12 carefully to provide accurate information to voters about how they can cure their ballots.

13 27. In anticipation of the potentially large number of deficient ballots, and to  
14 ensure that all of their members and constituents' ballots will be counted, ADP properly  
15 requested records of these ballots pursuant to Arizona's Public Records Law to allow it the  
16 time and opportunity to help voters cure their ballots.

17 28. ADP submitted a written records request to the Recorder on or about  
18 September 1, 2020, which asked for public records relating to the November 3, 2020 general  
19 election on a rolling basis. As pertinent here, Plaintiff requested, in advance:

20 As ballots are processed, both before the final disposition and  
21 before the cure period comes to completion, control sheets or  
22 other logs indicating: 1) name of voter, 2) ballot defect,  
23 3) method of contact by recorder/staff, 4) time(s)/date(s)  
24 contacted, 5) number of times contacted, for any voter whose  
ballot has a missing or mismatched signature or other defect,  
including conditional or regular provisional ballots if voting in  
person.

25 29. In its request, ADP requested records on a regular, rolling basis given the  
26 limited time frame to develop and implement a voter outreach and assistance program.

1           30.     On September 23, ADP had an additional discussion with the Recorder, and  
2 made it clear that ADP needed these requests to be produced by October 16, 2020 for them  
3 to be meaningful. The Recorder still declined to produce the requested records at that time.

4           31.     By submitting its records request well in advance of the November 3 election,  
5 ADP sought to reduce burdens on the Recorder, itself, and voters that may arise from efforts  
6 to cure deficient ballots under an already expedited timeline.

7           32.     Upon information and belief, the County either maintains or can create via a  
8 simple database query a document showing the deficient ballot information starting on or  
9 before October 16, 2020, as nearly every other Arizona county does.

10          33.     Arizona law imposes on the Recorder a statutory duty to respond “promptly”  
11 to a public records request. A.R.S. § 39-121.01(D)(1).

12          34.     “Promptly” in this context requires the Recorder to act quickly or without  
13 delay in the context of the circumstances. *See W. Valley View, Inc.*, 216 Ariz. at 230.

14          35.     Here, ADP has requested this information—which the Recorder has readily  
15 available as ballots are returned—to assist its members and constituents with curing their  
16 ballots. Voters with missing signatures must cure before 7:00 p.m. on November 3, 2020.  
17 As such, the Recorder’s refusal to disclose the information before November 4, 2020, after  
18 the cure deadline, is not prompt in this context and effectively renders ADP’s request futile.

19          36.     Providing mismatched signature information on November 5, 2020 is  
20 similarly deficient, as it provides ADP with mere days to contact these voters and assist  
21 them with curing. Given that general election turnout is anticipated to be high, as a practical  
22 matter it is unlikely that ADP will be able to assist all of these voters in this timeframe.

23          37.     Thus, the Recorder’s refusal violates the Arizona Public Records Law  
24 because she is not acting quickly or without delay under the circumstances providing public  
25 records, as the window for voters to cure deficient mail ballots is a matter of days.

26          38.     Without receiving the requested records on a rolling basis starting on or  
27 before October 16, 2020, Plaintiff’s attempts to assist thousands of eligible Arizonans—  
28 including many of ADP’s members and constituents—to cure their ballots to ensure that

1 their right to vote is protected would be rendered impossible or seriously hindered. The  
2 ballot data will lose almost all practical value if not obtained with enough time to contact  
3 eligible Arizonans.

## 4 CAUSE OF ACTION

### 5 **COUNT 1**

#### 6 **(Violation of the Arizona Public Records Law—Failure to “Promptly” Produce or Provide Access)**

7 39. Plaintiff realleges all other paragraphs in this Complaint as through fully  
8 stated here.

9 40. The Arizona Public Records Law, A.R.S. § 39-121.01, provides that “[a]ny  
10 person may request to examine or be furnished copies, printouts or photographs of any  
11 public record during regular office hours or may request that the custodian mail a copy of  
12 any public record not otherwise available on the public body’s website to the requesting  
13 person.” *Id.* § 39.121.01(D)(1).

14 41. Once a valid request is submitted, “[t]he custodian of such records,” which  
15 here is the Recorder, “*shall promptly* furnish such copies, printouts or photographs . . . .”  
16 *Id.* (emphasis added).

17 42. The requirement to furnish the documents “promptly” means “‘quick to act  
18 or to do what is required’ or ‘done, spoken, etc. at once or without delay’” in the context of  
19 A.R.S. § 39-121.01(D)(1). *W. Valley View, Inc.*, 216 Ariz. at 230 (citing *Webster’s New*  
20 *World Dictionary* 1137 (2d ed. 1980)).

21 43. The Recorder has violated the Arizona Public Records Law by failing to  
22 provide Plaintiff with “prompt” access to the requested records on a regular, rolling basis  
23 starting on or before October 16, 2020. *Id.*; *see also Yousoufian v. Office of Ron Sims*, 168  
24 Wash. 2d 444, 467 n.13 (2010) (delaying production of documents “long past their ability  
25 to influence a public vote” defeats the purpose of the state public records act).

26 44. No exception or excuse to providing the documents promptly applies in this  
27 case. Providing the requested documents on a rolling basis before election day will not  
28 violate rights of privacy or confidentiality or be detrimental to the best interests of the state.

